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8 Otto 366
Oct. 7. 1878.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 250.

THE CLEVELAND INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

THE GLOBE INSURANCE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED OCTOBER 14, 1876.

SUPREME COURT OF THE UNITED STATES.

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THE CLEVELAND INSURANCE COMPANY, PLAINTIFF IN ERROR,

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IN ERROR IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

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1 THE UNITED STATES OF AMERICA,
Northern District of Ohio:

At a stated term of the circuit court of the United States within and for the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in April, being the fourth day of said month, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States of America the one hundredth.

Present, the honorable Halmor H. Emmons, circuit judge.

Among the proceedings then and there had were the following, to wit:

GLOBE INSURANCE COMPANY, PL'FF IN ERROR,
vs.
CLEVELAND INSURANCE COMPANY, DEF'T IN error.
} Error to district court of United States for said district.

Be it remembered that heretofore, to wit, on the 16th day of December, A. D. 1874, came the said plaintiff in error, by its attorneys, and filed in said circuit court its complaint.

And thereupon, on said 16th day of December, A. D. 1874, there was duly issued out of the said circuit court a certain writ of error, directed to the judge of the district court of the United States within and for said district, which is in the words and figures following, to wit:

Writ of error.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The President of the United States of America to the judge of the district court of the United States for said district, greeting:

2 Because in the record and proceedings, and also in the rendition of judgment, in a certain matter which is in the said district court in bankruptcy before you, wherein the Globe Insurance Company is petitioning creditor against the Cleveland Insurance Company, debtor, a manifest error hath happened, to the great damage of the said Globe Insurance Company, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings, with all things concerning the same, to the circuit court of the United States for the sixth circuit and northern district of Ohio, together with this writ, so that you have the same at Cleveland, in said district, on the 5th day of January next, in the said circuit court to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the United States, this 16th day of December, A. D. 1875, and in the 99th year of the Independence of the United States of America.

[SEAL.]

EARL BILL,
Clerk U. S. Circuit Court.

And afterwards, to wit, on the 17th day of December, A. D. 1874, said writ of error was returned to and filed in said circuit court, endorsed as follows, to wit:

Return.

NORTHERN DISTRICT OF OHIO, *ss :*

The due execution of the within writ will appear by the transcript of proceedings and judgment of said district court, hereto annexed and returned herewith.

December 17th, 1874.

EARL BILL,
Clerk of said District Court.

The transcript referred to in said return is in the words and figures following, to wit:

3 *Petition.—Filed May* 2, '72.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss :

In the district court for said dist.

To the honorable Charles T. Sherman, judge of the United States district court for the district aforesaid:

The petition of the Globe Insurance Company of Cincinnati, Ohio, a corporation organized under the laws of Ohio, and resident in the county of Hamilton & State aforesaid, respectfully shows:

That your petitioner is a creditor of the Cleveland Insurance Company, an incorporated company organized under the laws of Ohio, and for more than a year next preceding the date of the filing of this petition resident of the city of Cleveland, and within the district aforesaid.

That your petitioner's demand is provable against the said Cleveland Insurance Company, in accordance with the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867.

That your petitioner believes that the said Cleveland Insurance Company owes debts greatly exceeding the sum of three hundred dollars.

That your petitioner's demand against the said Cleveland Insurance Company exceeds the amount of $250 dollars, and is as follows, to wit: Amongst other indebtedness of said Cleveland Insurance Company to the petitioner the sum of four thousand and ninety $\frac{90}{100}$ dollars, being the one-half of an adjusted loss upon a policy of insurance issued by said Cleveland Insurance Company to Sweet, Dempster & Co., of Chi-
4 cago, Illinois, of which the other half was reinsured to said Cleveland Insurance Company by your petitioner, and the whole of which said policy and the adjusted loss thereunder has been, since the occurrence of said loss, assigned by said Sweet, Dempster & Co., for a valuable consideration, to your petitioner, the whole of said loss, as adjusted and acknowledged by said Cleveland Insurance Company, amounting to the sum of eight thousand one hundred and eighty-one $\frac{81}{100}$ dollars.

Your petitioner further represents, that within the six calendar months next preceding the date of this petition the said Cleveland Insurance Company did commit an act of bankruptcy within the meaning of said act, to wit, that said Cleveland Insurance Company did, on or about the 9th day of November, A. D. 1871, being possessed of certain estate, property, rights, and credits, to wit, of large amounts of money, promissory notes, bonds, stocks, securities, & choses in action,

amounting, as your petitioner is informed and believes, and therefore avers, to the sum of three hundred thousand dollars, did make an assignment of the same to one M. C. Younglove, of Cleveland, in the county of Cuyahoga & State of Ohio aforesaid, with intent to delay and hinder the creditors of the said Cleveland Insurance Company.

Also, that the said Cleveland Insurance Company, within the period aforesaid, and within said district, to wit, at Cleveland aforesaid, on the 9th day of November, 1872, being in contemplation of insolvency and in contemplation of bankruptcy, did make to the said M. C.
5 Younglove, of Cleveland, in the county of Cuyahoga and State of Ohio aforesaid, a conveyance and transfer of large amounts of money, promissory notes, bonds, stocks, securities, and choses in action, amounting, as your petitioner is informed and believes, & therefore avers, to the sum of three hundred thousand dollars or more, & constituting the greater part of all the assets of said Cleveland Insurance Company, with the intent by such disposition of said property to delay and to defeat the operation of said act to establish a uniform system of bankruptcy throughout the United States.

Wherefore your petitiener prays that the said Cleveland Insurance Company may be declared a bankrupt, and that a warrant may be issued to take possession of said company's estate; that the same may be distributed according to law; and that such further proceedings may be had thereon as are prescribed by the statute in such cases made and provided.

SAM'L F. COVINGTON,
Vice President of Globe Ins. Co. of Cincinnati, Ohio.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

Samuel F. Covington, being duly sworn, says he is the vice-president and principal active officer of the Globe Insurance Company of Cincinnati, the petitioner in the foregoing petition; that the statements contained in said petition by him subscribed are true so far as the same are stated as of the knowledge of the petitioner, and that
6 those matters which are stated therein on information and belief are true according to the best of his knowledge, information, and belief.

SAM'L F. COVINGTON.

Signed in my presence and sworn to before me this twenty-ninth day of April, A. D. 1872.

EDWARD P. CRANCH,
Register in Bankruptcy for the Southern District of Ohio.

7 *Deposition to act of bankruptcy.—Filed May 2, '72.*

In the district court of the United States for the northern district of Ohio.

In the matter of the Cleveland Insurance Company, against whom a petition is filed on 2d May, 1872, in bankruptcy. In bankruptcy.

At Cleveland, in said district, on the 2d day of May, A. D. 1872, before M. R. Keith, one of the registers of said court in bankruptcy.

NORTHERN DISTRICT OF OHIO, *ss:*

J. E. Ingersoll, being duly sworn and examined, upon his oath says

that he is a resident of said city of Cleveland, and is acquainted with the said Cleveland Insurance Company and with its managing officers. That he knows from the admissions of M. C. Younglove, hereinafter

referred to as the person to whom an assignment was made, which admissions were made in the course of inquiries made by deponent in behalf of parties having claims against said Cleveland Insurance Company, that the said Cleveland Insurance Company became embarrassed by losses incurred in the great Chicago fire, which occurred in the month of October, 1871, and that said Cleveland Insurance Company was in consequence unable to pay its obligations as they fell due in the usual course of business.

And this deponent further says that on the 8th day of November, 1871, the said Cleveland Insurance Company executed a deed of
8 trust and assignment, a copy of which is hereto attached, marked Exhibit A, and made a part of this deposition, and on the 11th day of November, 1871, caused the same, with the acceptance of M. C. Younglove written thereon, who is the assignee therein designated, to be filed in the probate judge's office of Cuyahoga County, in the State of Ohio, within which county last named was located the chief office for business of said Cleveland Insurance Company; and thereafter the said M. C. Younglove took possession of the assets named in said deed of assignment so far as he could get control thereof, and now has the control thereof, and claims to be taking such steps as are in his judgment advisable for the closing up of the affairs of said Cleveland Insurance Company as an insolvent corporation, and he gives out that he is unable to tell, because of the outstanding policies of said Cleveland Insurance Company which have several years to run, when he will be able to close up said business or make any dividend to the creditors of said Cleveland Insurance Company.

J. E. INGERSOLL.

NORTHERN DISTRICT OF OHIO, *ss:*

On the 2d day of May, A. D. 1872, personally appeared J. E. Ingersoll, the above-named witness, and subscribed and made oath to the truth of the foregoing statement.

M. R. KEITH,
Register in Bankruptcy.

9 EXHIBIT A.

Know all men by these presents, that the Cleveland Insurance Company, a corporation created by the laws of the State of Ohio, and having its principal office and place of business in the city of Cleveland, in the county of Cuyahoga and State of Ohio, in consideration of the sum of one dollar paid to said company by Moses C. Younglove, the receipt whereof is hereby acknowledged, and of the uses and purposes and trusts hereinafter mentioned, has granted, bargained, and sold, assigned, transferred, and set over, and by these presents does grant, bargain, and sell, assign, transfer, and set over, unto the said Moses C. Younglove, his heirs and assigns, the following described real estate situate in the city of Cleveland aforesaid, and known as parts of original two-acre lot No. 205, and bounded as follows:

The first piece beginning at a stone at the south end of the west line of Water street, thence running south 75° west on the northerly line of Superior street fifty-six and one-fourth links; thence north 36° west, parallel with Water street eighty-two links; thence north 54° east, 53½

links to the west line of Water street, and thence southerly along Water street one chain & ⅗ of a link to the place of beginning, being the premises conveyed in a deed from Heman Oviatt et al. to George A. Davis, dated May 6, 1851, and recorded in book 51 of Cuyahoga records, page 203–4.

The second piece beginning on the northerly line of Superior street at the southwesterly corner of the piece above described,
10 thence running south 77° west thirty feet seven and one-half inches to the intersection of the northerly line of Superior street with the northerly line of Union street; thence south 62° 40′ west along the northerly line of Union street 51 feet 7¼ inches; thence north 48° 42′ east 53 feet and ½ an inch to the westerly corner of the lot above described, and thence south 35° 41′ east along the westerly line of the lot above described as aforesaid 62 feet 9¼ inches to the place of beginning, being the same premises conveyed in a deed from O. M. Oviatt and wife to said George A. Davis, dated June 10th, 1851, and recorded in the records of deeds of said county, vol. 51, pp. 304–5, which said parcels of land were conveyed by the said George A. Davis and wife to said insurance company by deed dated May 20, 1867, which deed is recorded in Cuyahoga County records, vol. 149, p. 93, to which reference is hereby made, and which said parcels of land constitute all the real estate of said Cleveland Insurance Company, and also all the personal property, goods, chattels, stocks, bonds, notes, book accounts, claims, debts, demands, judgments, choses in action, and all of its property of every kind and nature, whether situate in the said city of Cleveland or elsewhere.

To have and to hold all of said property, real, personal, and mixed, and every part and parcel thereof, with the appurtenances, unto him the said Moses C. Younglove, his heirs, executors, administrators, and assigns.

In trust, nevertheless, and to and for the uses, intents, and purposes following, that is to say:

11 1st. To take possession of the said property hereby assigned, and to sell and dispose of the same with all convenient diligence and to convert the same into money, and to collect all such debts and demands as may be collectable, proceeding herein under and in pursuance of the laws of the State of Ohio relating to assignments of insolvent debtors, and under and in pursuance of the direction of the probate judge of Cuyahoga County.

Secondly. To pay and discharge all the just and reasonable expenses, costs, and charges of executing this assignment, and of carrying into effect the trust hereby created, together with a reasonable commission or compensation to the said Moses C. Younglove for his own services in executing this trust, and out of the residue of the proceeds of said sales and collections,

Thirdly. To pay and discharge under said law and the direction of said probate judge all the debts and liabilities now due or to become due from said Cleveland Insurance Company, and if there be not sufficient of said proceeds to pay the said debts and liabilities in full, then to apply the same pro rata, so far as they will extend, to the payment of said debts and liabilities, according to their respective amounts, and if, after the payment of all costs, charges, and expenses attending the execution of this trust, and the payment and discharge in
12 full of all lawful debts owing by the said Cleveland Insurance Company of any every description, there should be a surplus of said proceeds in the hands of the said Moses C. Younglove, then,

Lastly, to pay over and return the same to the said insurance company, their successors and assigns.

And for the better and more effectual execution of these presents and of the trusts hereby created and reposed, the said Cleveland Insurance Company does hereby make, constitute, and appoint the said Moses C. Younglove its true and lawful attorney irrevocable, with full power and authority to do, transact, and perform all acts, deeds, matters, and things which may be necessary in the premises, and to the full execution of this trust, and for the purposes of this trust to ask, demand, recover, and receive of and from all and every person and persons all the property, debts, and demands belonging and owing to said Cleveland Insurance Company, and to give acquittances and discharges for the same, and to sue, prosecute, defend, and implead for the same, and to execute, acknowledge, and deliver all necessary deeds and instruments of conveyance, and also for the purposes aforesaid, or any part thereof, to make, constitute, and appoint one or more attorneys under him, and at his pleasure to revoke the same, hereby ratifying and confirming whatever the said Moses C. Younglove or his substitutes shall lawfully do in the premises.

In witness whereof the said Cleveland Insurance Company has caused its name to be subscribed and its official seal to be attached
13, 14 hereto by its president this 8th day of November, 1871.

(Signed) THE CLEVELAND INSURANCE CO.,
By H. B. PAYNE, *Pres't.*

Attest:
[SEAL.] JOHN J. SHIPHERD,
Secretary.

Signed, sealed, and delivered in the presence of—
W. S. C. OTIS,
JOHN J. SHIPHERD.

[50 dollars U. S. revenue stamp.]

THE STATE OF OHIO,
Cuyahoga County, ss:

Before the subscriber, a notary public within and for said county, personally appeared the Cleveland Insurance Company in and by Henry B. Payne, its president, and acknowledged that it did sign, seal, and deliver the foregoing deed of assignment and conveyance, and that the same is its free act and deed.

In witness whereof I have hereunto set my hand and official seal this 9th day of November, 1871.

[SEAL.] (Signed) WILLIAM H. BREW,
Notary Public.

I, the above-named Moses C. Younglove, do hereby accept the conveyance and trust created and reposed in me by the foregoing presents, and do for myself, my heirs, executors and administrators, hereby covenant and agree to and with the said Cleveland Insurance Company that I will honestly and faithfully execute the same, according to the best of my skill and ability, under the laws of the State of Ohio and the directions of the probate judge of Cuyahoga County.

Cleveland, November 8, '71.

(Signed) M. C. YOUNGLOVE.

15 *Deposition as to petitioning creditors' claims.—Filed May 2, '72.*

In the district court of the United States for the northern district of Ohio.

In the matter of the Cleveland Insurance Company, against whom a petition for adjudication of bankruptcy was filed on the day of A. D. 1872. In bankruptcy.

At Cincinnati, in the southern district of Ohio, on the 29th day of April, A. D. 1872, before Edward P. Cranch, one of the registers of the district court, U. S. for said district, in bankruptcy.

SOUTHERN DISTRICT OF OHIO, *ss:*

Samuel F. Covington, of Cincinnati, in the county of Hamilton and State of Ohio, being duly sworn and examined at the time and place above mentioned, upon his oath says that the said Cleveland Insurance Company was on and before the 12th day of March, A. D. 1872, and still is justly and truly indebted unto the Globe Insurance Company of Cincinnati, of which deponent is vice-president and chief acting officer, in the sum of four thousand and ninety $\frac{90}{100}$ doliars, being the one-half of an adjusted loss upon a policy of insurance issued by said Cleveland Insurance Company to Sweet, Dempster & Co., of Chicago, Illinois, of which the other half was reinsured to said Cleveland Insurance
16 Company by the petitioner, and the whole of which said policy and the adjusted loss thereunder and claim has been since the occurrence of said loss assigned by said Sweet, Dempster & Co. to the petitioner for a valuable consideration.

SAM'L F. COVINGTON,
Vice-President & Chief Acting Officer of the Globe Ins. Co. of Cin., Petitioning Creditor.

On the 29th day of April, A. D. 1872, before me personally appeared Sam'l F. Covington, vice-pres't of the above-named petitioning creditor, and was duly sworn to the truth of the foregoing statement.

EDWARD P. CRANCH,
Register in Bankruptcy.

17 In the district court of the United States for the northern district of Ohio.

In the matter of Cleveland Insurance Company, against which a petition for adjudication of bankruptcy was filed on the 2d day of May, A. D. 1872. In bankruptcy.

NORTHERN DISTRICT OF OHIO, *ss:*

Upon filing proofs sustaining the allegations of the petition aforesaid, it is ordered that the said Cleveland Insurance Company, debtor, do appear at this court as a court of bankruptcy, to be holden at Cleveland, in said district, on the 9th day of May, A. D. 1872, at 10 o'clock, a. m., and show cause, if any there be, why the prayer of said petition should not be granted. And it is further ordered, that a copy of said petition, together with a copy of this order, be served on Cleveland Insurance Company, said debtor, by delivering the same to the president, or other chief officer thereof, at least five days previous to the day herein required for the appearance of the said Cleveland Insurance Company.

Witness the honorable Martin Welker, judge of said court, and the seal thereof, at Cleveland, in said district, on the 2d day of May, A. D. 1872.

[SEAL.] EARL BILL, *Clerk.*

18 NORTHERN DISTRICT OF OHIO, *ss:*

After diligent search I have failed to find Henry B. Paine, president of the Cleveland Insurance Company, he being absent from the northern district of Ohio. I therefore made due service of this order at Cleveland, Ohio, on the 3rd day of May, A. D. 1872, by delivering a true and certified copy thereof, and also a copy of the original petition filed in this cause, to J. J. Shipherd, secretary of the Cleveland Insurance Company.

R. HASTINGS,
U. S. Marshal.

Marshal's fees: Service, $2.00; travel necessary to service, miles; copy, .50—$.

19 *Answer.—Filed June* 24, '72.

United States district court, northern district of Ohio.

In the matter of the Cleveland Insurance Co., bankrupt. Answer.

The answer of the Cleveland Insurance Company to the petition in bankruptcy filed against it by the Globe Insurance Company, of Cincinnati, Ohio.

The defendant denies that the petitioner herein is creditor of this defendant, but alleges on the other hand that the petitioner is largely the debtor of defendant.

Defendant denies that petitioner has any demand against it provable under said act, in the sum of $250 or any other sum.

Defendant has no knowledge as to the alleged assignment to petitioner by said Sweet, Dempster & Co., & therefore denies the same.

Defendant denies that at the time set forth in said petition, or at any other time, it made any assignment of any of its estate, property, rights or credits to said M. C. Younglove with intent to hinder or delay its creditors or any portion thereof.

Defendant denies that at the time set forth in said petition, or at any other time, it made any transfer or conveyance of any money, promissory notes, bonds, stocks, securities or choses in action with intent to delay or defeat the operation of said bankrupt act, or that it ever contemplated bankruptcy in any manner whatever.

20 Defendant alleges in relation to said alleged acts of bankruptcy, that having become insolvent, by reason of heavy losses at the Chicago fire, in October, 1871, it did on or about the date mentioned in the petition make to the said M. C. Younglove a general assignment under the insolvent laws of the State of Ohio of all its assets, property, estate, rights and credits of every nature, for the purpose of having the same distributed ratably among all its creditors; that said assignment was made in good faith and for the sole purpose of securing an equal distribution of all its assets and rights among its creditors in the cheapest and speediest manner.

Defendant further says that from the time of said assignment, to wit, on or about the 9th day of November, A. D. 1871, up to about the 14th

day of March, A. D. 1872, the petitioner had full knowledge of the fact of said assignment, and of the various proceedings being had and taken thereunder, and of the rights and interest thereby supervening, and yet made no objection to said assignment or said proceedings thereunder, but quietly acquiesced therein with such knowledge as aforesaid, although the lapse of time from and after said 14th day of March defendant claims no advantage from, it having been by arrangement between the parties.

Defendant further says, that before the alleged arrangement and transfer to petitioner of said claim by said Sweet, Dempster & Co., and after said assignment by defendant to said Younglove, the said
21 Sweet, Dempster & Co., with full knowledge of said assignment to said Younglove, and of all things pertaining thereto, prepared alleged proofs of their claim for losses by said fire, being the identical claim set up by petitioner in said petition, and filed or procured them to be filed with said assignee, and to be duly authenticated before him, all which was done for the purpose of receiving from said assignee their distributive share of the assets of said company upon their said claim, and with full knowledge of said assignment from its date, fully acquiesced in the same, wherefore and by reason of the premises they were, and the petitioner is and should bee stopped from seeking to avoid said assignment by proceedings in bankruptcy, or other adversary proceedings.

Defendant alleges on information and belief that on or about the 6th day of March, 1872, the said Sweet, Dempster & Co., before the said assignment of their claim to petitioner, with the other policy holders of said defendant at Chicago, who had sustained losses by the Chicago fire, through their agent, came to Cleveland for the purpose of investigating said assigneeship and determining the propriety of proceedings in bankruptcy with authority to commence the same if deemed expedient, and after repeated consultations with said assignee, entered into an agreement with said assignee that such proceedings should not be instituted, but that an attorney agreed upon by the Chicago creditors, and as their representative, should act in conjunction with the assignee,
22 with him and for their interests, under which arrangement and agreement the assignee proceeded with his business as such under and conformably to the same, supposing that no further interference with said assigneeship by bankruptcy proceedings would be attempted or threatened.

Defendant further alleges that the petitioner being liable to the defendant in the sum of about $50,000, reinsurance on policies, under which defendant had become liable by said fire for said amount, proceeded to buy up said original policies and the claims under them at a low rate, viz, at less than fifty cents on the dollar, and having failed in its endeavor to procure the assent of said Younglove, assignee, to allow said claims at their face in payment of its said reinsurance liability, it filed this petition upon one of the policies and claims so purchased; that said claims and policies were so purchased by petitioner with the sole and avowed purpose of offsetting them against its said liability, and for the purpose of securing an unlawful preference by the payment in full of the claims so purchased by it, it being claimed by it that such preference could be had under the 20th section of the bankrupt act.

Defendant alleges that said assignee has faithfully fulfilled all his duties as such and declared a dividend as soon as it was proper, judicious, and safe for him to do so, which dividend of 25 per cent. is payable on the 25th day of June, A. D. 1872, which will be then paid

and a final closing up of the whole estate with final dividend be
23, 24 had in a manner consistent with the best interests of the cred itors, unless said assignment is interfered with by proceedings or adjudications in bankruptcy.

Wherefore defendant prays that said petition may be dismissed with costs.

WILLEY, CARY & TERRELL,
Sol's for Defendant.

NORTHERN DISTRICT OF OHIO, *ss:*

H. B. Payne, president of the Cleveland Insurance Company, being first duly sworn, says that he has read the foregoing answer, and as to those things which are stated to be on information and belief believes it to be true, and as to the other matters and things therein stated, it is true.

H. B. PAYNE.

Sworn to before me by said H. B. Payne, and by him subscribed in my presence, this 24th day of June, A. D. 1872.

CHARLES H. ROBINSON,
U. S. Commissioner.

25 In the district court of the United States for the northern district of Ohio.

In the matter of the Cleveland Ins. Co. In bankruptcy.

At Cleveland, in said district, on the 24th day of September, A. D. 1872, before the honorable Charles T. Sherman, judge of said court.

This matter came on to be heard upon the motion of the said Globe Insurance Company, of Cincinnati, petitioning creditor, to strike out of the answer to their said petition certain portions thereof, and was argued by counsel. On consideration whereof it is ordered that said motion be and the same is hereby overruled, to which order the said Globe Insurance Company excepts.

And on motion, it is further ordered that said Globe Insurance Company have leave to file its reply to said answer within ten days from this date.

Witness the honorable Charles T. Sherman, judge of said court, and the seal thereof, at Cleveland, in said district, this 24th day of September, A. D. 1872.

[SEAL.] EARL BILL, *Clerk.*

26 (Indorsed:) Filed Sept. 24, 1872. Earl Bill, clerk.

27 *Reply.—Filed Oct.* 4, '72.

United States district court, northern district of Ohio. In bankruptcy.

In the matter of the Cleveland Insurance Company, bankrupt. Reply.

The said petitioner, for reply to such of the affirmative allegations of the answer of said bankrupt as they are advised it is material or necessary for it to make reply unto, say:

That it denies any and all acquiescence in said assignment to said M. C. Younglove, and all the allegations of said answer after the second page thereof; that it denies any recognition of said assignment by

Sweet, Dempster & Co., but alleges that said Sweet, Dempster & Co. simply and only filed their proofs of loss with the acting agent of said Cleveland Insurance Company at Chicago, and says that had the said Sweet, Dempster & Co. performed the acts alleged in said answer, which this petitioner denies, the same would not in law estop this petitioner from its rights as heretofore alleged.

Petitioner denies all agreements by Sweet, Dempster & Co., or their attorney, or any attorney authorized to act for them, as alleged in said answer, & denies that said allegations have any legal effect upon petitioner's rights in the premises.

Petitioner denies every allegation of acts performed on its part
28 with purpose of securing an unlawful preference; denies any dealings with said M. C. Younglove, except as a means of communicating with said Cleveland Insurance Company, and alleges that upon any lawful accounting the said Cleveland Insurance Company was and is largely indebted to petitioner.

By COX & FOLLETT, &
HUTCHINS & INGERSOLL,
Its Att'ys.

Sam'l F. Covington, being duly sworn, says he is the vice-president and chief active managing officer of the said Globe Insurance Company of Cincinnati, and that the statements of the foregoing reply are true as he verily believes.

S. F. COVINGTON.

Signed in my presence and sworn to before me this third day of October, A. D. 1872.

[SEAL.] THOMAS AMBROSE,
Clerk of the U. S. Circuit Ct, Southern District of Ohio.

29, 30 In the district court of the United States for the northern district of Ohio.

In the matter of the Cleveland Insurance Company. In bankruptcy.

At Cleveland, in said district, on the 16th day of October, A. D. 1874, before the honorable Martin Welker, judge of said court.

This cause came on to be heard this day, and there were present at said hearing J. E. Ingersoll, esq., solicitor for said Globe Insurance Company, and Mess'rs Willey, Terrell & Sherman, counsel for said Cleveland Insurance Company, and the testimony of witnesses having been given, and the arguments of counsel having been heard by the court, thereupon, on consideration of the proofs in said cause, and of the arguments of counsel, it was found that the facts set forth in said petition were not proved, and it is therefore ordered that said petition be dismissed at the costs of said petitioner, and that all proceedings under the same be vacated and annulled. And it is further ordered that the said Globe Insurance Company pay said costs within ten days, or in default thereof that execution issue to collect the same. Thereupon said Globe Insurance Company excepts to the foregoing finding & order of the court, & moves the court for a new trial of this cause, which exception & motion for a new trial are overruled with costs; to which order said petitioner, by his counsel, excepts.

Witness the honorable Martin Welker, judge of said court, and the seal thereof, at Cleveland in said district, this 16th day of October, A. D. 1874.

[SEAL.] EARL BILL, *Clerk.*

31, 32 *Motion for new trial.—Filed Oct.* 16, '74.

In the district court of the United States for the northern district of Ohio.

In the matter of the Cleveland Insurance Company, against which a petition for adjudication was filed May 7, 1872, by Globe Ins. Co. Motion for new trial.

And now upon this 16th day of October, A. D. 1874, being a day in the October term of this court, after the finding by the court on the issues made in favor of the defendant, and before judgment entered thereon, the petitioning creditor files its motion for a new trial, on the following grounds:

First. That the court erred on the trial in the admission of evidence excepted to at the time by petitioners.

Second. That the findings of the court in its opinion announced are against the evidence, and not supported by it.

Third. That the findings of the court are contrary to the law applicable to the case.

Fourth. That the findings should have been for petitioner instead of respondent.

Whereupon the petitioner moves the court to grant a new trial of this case.

COX, FOLLETT & COCHRAN, &
J. E. INGERSOLL,
Att'ys for Pet'r.

33 *Bill of exceptions.—Filed Dec.* 16, '74.

In the district court of the United States for the northern district of Ohio.

THE GLOBE INSURANCE COMPANY, petitioner,
vs.
THE CLEVELAND INSURANCE COMPANY, respondent, against whom a petition for adjudication was filed, &c.
} In bankruptcy. Bill of exceptions.

Be it remembered that on the 23d day of September, A. D. 1874, the parties come and are at issue. And the respondent not having demanded a jury for the trial of the issues involved, this cause is heard before the court, and the plaintiff, to maintain the issues on its part, called the following witnesses, namely, S. V. Covington, M. C. Younglove, John J. Shipherd, Henry B. Payne, Charles Hicox, and W. H. Brew, who, being duly sworn, testified as is fully set forth in Exhibit A, which is herewith filed, and the petitioner also offered in support of the issues the record of the proceedings of the meetings of the directors of the respondents, held in October and November, 1871, a copy of which is herewith filed, marked Exhibit B. And this comprises all the evidence offered upon the hearing of this cause. And thereupon, after the argument of counsel, the court takes until the 16th day of October to consider the case. And on the day last named the court, being duly advised in the premises, do find:

First. That the respondent at the date of the filing of the pe

34 tition in bankruptcy herein was a citizen and resident of said district.

Second. That the respondent was indebted to the petitioners in the amount of more than $250, as set forth in the said petition.

Third. That the respondent debtor owed debts at the date of filing said petition to an amount greater than $300.

Fourth. That respondent, on the 9th day of November, A. D. 1871, assigned and transferred to M. C. Younglove all its property, real, personal, and mixed, including choses in action, in trust, to be converted into money under the State law of Ohio, and applied pro rata under that law towards the payment of its debts.

Fifth. That upon the tenth day of October, 1871, the respondent became in an insolvent condition, owing to the large fire in Chicago, and were at that date, or by a day or two thereafter, aware of their insolvency.

Sixth. That after the date last named, and before its assignment on the 9th day of November, A. D. 1871, it paid in full a coal bill in amount of $83.97, contracted in August, 1871, and various debts to its employees, in sums exceeding $50 each, among which were the services of W. H. Brew for the month of October, 1871, in the sum of $166.66, the services of J. J. Shipherd, for the same time, in the sum of $416.66, and of various other employees, making about $1,000, being current expenses of the office, which was kept running, with a sufficient force of employees to adjust losses, keep the books, and ascertain the ex-
35 tent of the losses at Chicago, in order to decide what course it would be necessary and best for creditors for the company to pursue.

Seventh. That M. C. Younglove, the assignee so chosen, was at the time and still continues to be a large stockholder in said Cleveland Insurance Company. And the property so assigned was about half a million dollars in value, and the total indebtedness being over a million of dollars, represented by many thousand creditors, of whom the petitioner is the only one now complaining of the assignment to M. C. Younglove.

Eighth. That prior to making the assignment and in order to reach a conclusion as to what was adviseable, the president of the company took advice of his attorney and others as to the comparative expense of closing an estate under the bankrupt law and under the State assignment law, and being satisfied that the State law was more economical, and would secure a larger dividend to creditors because of its being more economical and giving more time to close up the matters than the bankrupt law, he advised the directors and they acted on his advice in making said assignment, the said company having in view in making this assignment the best interests of the creditors.

Ninth. That the petitioner purchased its claims against the defendant with the avowed object of protecting itself and offsetting them against its liability on a policy of reinsurance, and being advised by counsel that no such offset could be obtained as against the assignee under the State law, and such purchase being made, including the debt
36 set up in the petition, after the commission of the alleged acts of bankruptcy, and at a time when the petitioner had full knowledge thereof.

Tenth. That by reason of the fire at Chicago the petitioner became liable to the respondent on a policy of reinsurance to an amount exceeding $50,000, & that after said fire and before the appointment of said Younglove as assignee, the petitioner, by its duly authorized agent,

entered into negotiations with the president of the respondent in respect to the settlement of said liability, and that shortly after the appointment of said Younglove as assignee, and upon notice of such appoinfment, the, petitioner resumed its negotiations with said assignee, offering at this stage of the negotiations fifty per cent. in full settlement, which said assignee refused. And thereupon the petitioner avowed its intention of going to Chicago and buying up at a discount the claims which the petitioner had so reinsured, in order to protect itself on its contract of reinsurance and to offset against its liability, which it proceeded to do. That after the purchase of said claims, amounting to some $60,000 at their face, the petitioner, by letter, notified the said assignee that there was a balance in its favor over and above its liability for reinsurance of two or three thousand dollars, which being allowed by the assignee, it would settle, which was also refused by said assignee. That thereupon the petitioner, by its duly authorized agent, came again to Cleveland to negotiate a final settlement with said assignee, and after considerable negotiation offered to pass receipts in full and clean the score between them, which
37 said assignee refused to do. And then, for the first time, the petitioner declared an intention of throwing the respondent into bankruptcy. These negotiations with the assignee began about a week after his appointment and continued until March 14th following, during all of which time the petitioner had full knowledge that said assignee was going forward in the execution of his trust, and made no objections thereto. And upon such facts the court does find as matters of law—

Eleventh. That an assignment under the State law is not per se an act of bankruptcy.

Twelfth. That such assignment, in order to be impeachable under the bankrupt act, must be tainted with such fraud as under the statute of Elizabeth would make it fraudulent and void as against creditors, or must be made with intent to defeat, delay, or hinder creditors, or delay or defeat the operation of the bankrupt act, &c.

Thirteenth. That there is no such state of facts as suffices to impeach the assignment under the bankrupt law or to sustain either act of bankruptcy charged in the petition.

Fourteenth. That these negotiations did not estop the petitioner to put respondent into bankruptcy.

Fifteenth. That the fact that petitioner purchased the debt after the commission of the act of bankruptcy complained of, and its knowledge thereof, did not estop it.

And I therefore dismiss the petition.

38 To all and each of which findings of law the petitioner at the time excepts, and moves the court for a new trial, which is heard and overruled, to which overruling of motion for a new trial the petitioner excepts, and asks the court to allow its bill of exceptions herein and set hereto its hand and seal, which is accordingly done at the October term, A. D. 1874, of said district court.

[SEAL.] M. WELKER,
Dist. Judge U. S.

Clerk's certificate.

NORTHERN DISTRICT OF OHIO, *ss:*

It is hereby certified that the foregoing is truly taken and copied from the record and proceedings of the district court of the United States within and for the northern district of Ohio.

Witness my official signature and the seal of said court, at Cleveland, in said district, this 17th day of December, 1874.

[SEAL.]

EARL BILL,
Clerk of said District Court.

39 And afterwards, to wit, on the 21st day of December, A. D. 1874, there was duly filed in the clerk's office of said circuit court a certain motion to dismiss the said writ of error, which is in the words and figures following, to wit:

Motion to dismiss writ of error.

U. S. circuit court, northern district of Ohio.

THE GLOBE INSURANCE COMPANY OF CINCINNATI
vs.
THE CLEVELAND INSURANCE CO.

And now comes the said defendant and moves the court to dismiss the writ of error herein, for the reason that the proceeding below being one for an adjudication of bankruptcy in which no jury was demanded by the defendant, the case is not removable into this court by writ of error.

WILLEY, TERRELL & SHERMAN,
Att'ys for Defendant.

Motion to dismiss overruled.

And afterwards, to wit, at the October term of said court, A. D. 1874, to wit, on the 21st day of December, A. D. 1874, came the parties by their attorneys, and this case came on to be heard upon the motion of said defendant to quash the writ of error heretofore issued in this case, and was argued by counsel. On consideration whereof, it is or-
40 dered that the said motion be overruled.

And afterward, to wit, on the 27th day of November, 1875, the following motion to dismiss writ of error was filed herein in said clerk's office, which is in the words and figures following, to wit:

Mo. to dismiss writ of error.—Filed Nov. 27, '75.

U. S. circuit court, northern district of Ohio. In bankruptcy.

THE GLOBE INSURANCE COMPANY
vs.
THE CLEVELAND INSURANCE COMPANY.
} Motion to dismiss writ of error.

And now comes the said defendant, the Cleveland Insurance Company, and moves the court to dismiss the writ of error herein, for the following causes:

1st. Because this being a petition in involuntary bankruptcy, where the bankrupt or debtor demanded no jury, but hearing was had to the court, the case is not removable into this court by writ of error, but by petition for review or other proper process under the first clause of the second section of the bankrupt act.

2d. Because the debt or damages claimed in the petition herein do

not amount to more than five hundred dollars; in fact no debt or damages are claimed at all.

3d. Because the writ of error herein was not sued out or taken within ten days after the entry of the decree or decision of the district court herein, nor were the statutes regulating the granting of writs
41 of error complied with within ten days after the entry of the decree or decision of the district court.

WILLEY, TERRELL & SHERMAN,
Att'ys for Def't.

Motion to dismiss overruled.

And afterward, to wit, at the October term of said court, to wit, on the 27th day of November, A. D. 1875, this cause came on to be heard upon the motion of said defendant to dismiss the writ of error herein for the reasons following, to wit:

1st. Because this being a petition in involuntary bankruptcy, where the bankrupt or debtor demanded no jury, but hearing was had to the court, the case is not removeable into this court by writ of error, but by petition for review, or other proper process under the first clause of the second section of the bankrupt act.

2d. Because the debt or damages claimed in the petition herein, do not amount to more than $500; in fact no debt or damages are claimed at all.

3d. Because the writ of error herein was not sued out or taken within ten days after the entry of the decree or decision of the district court herein, nor were the statutes regulating the granting of writs of error complied with within ten days after the entry of the decree or decision of the district court.

And thereupon, the court being fully advised in the premises, and the arguments of counsel being fully heard, it is ordered that said motion be overruled, to which order or ruling of the court the defendant excepts.

42 *Judgment of reversal, &c.*

And afterward, to wit, at the April term of said court, to wit, on the 15th day of June, A. D. 1876, came the parties by their attorneys, and thereupon this cause came on to be heard as well upon the transcript of the judgments and other proceedings between said parties in the district court of the United States within and for the northern district of Ohio, sitting at Cleveland, Ohio, brought here by writ of error from this court to the said district court, as also upon the matters by the said Globe Insurance Company herein assigned for error, and the same being seen and by the court now here fully understood, and mature deliberation being thereupon had, it appears to the court here that in the record and proceedings aforesaid and in giving the judgment aforesaid there is manifest error, in this, to wit:

In the holding and adjudging by the said district court that the assignment by said Cleveland Insurance Company to Moses C. Younglove, in the said petition of the said Globe Insurance Company set forth, was not an act of bankruptcy within the purview and meaning of the bankrupt laws of the United States, and also in this, to wit, that the said district court dismissed the said petition of said Globe Insurance Company, and ordered said Globe Insurance Company to pay the costs of said proceedings in said district court.

Therefore, it is considered that the judgment aforesaid for the errors aforesaid be reversed, annulled, and altogether held for naught, and that the said Globe Insurance Company be restored to all things
43 which it has lost by occasion of said judgment, and recover against the said Cleveland Insurance Company its costs in this behalf expended, taxed at $60.65.

And thereupon it is ordered that a special mandate be sent down to said district court to carry this judgment into execution. And it is further ordered that this cause be remanded to the said district court by writ of procedendo, commanding the judge of said court to proceed according to law to set aside its order dismissing the petition of the said Globe Insurance Company, and thereupon to adjudge the said Cleveland Insurance Company bankrupt as prayed for in and by said petition of said Globe Insurance Company, and further to proceed in said matter in such manner according to the laws of the land as he shall see proper, the said writ of error to the contrary notwithstanding.

Thereupon comes the said Cleveland Insurance Company by Willey, Terrell & Sherman, its solicitors, and excepts to the judgment and orders made in and by this court as aforesaid.

44 NORTHERN DISTRICT OF OHIO, *ss:*

It is hereby certified that the foregoing is truly taken and copied from the record and proceedings of the circuit court of the United States within and for the district aforesaid.

Witness my official signature and the seal of said court, at Cleveland, in said district, this 9th day of October, A. D. 1876.

[SEAL.] EARL BILL,
Clerk of said Circuit Court.

45 Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States within and for the northern district of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment of a plea, which is in the said circuit court before you, between the Globe Insurance Company, plaintiff, and the Cleveland Insurance Company, defendant, a manifest error hath happened, to the great damage of the said defendant as by its complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf; you are hereby commanded, if judgment be given therein, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in the month of October next, in the said Supreme Court, then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 19th day of June, in the year

of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States of America the 100th.

Attest:

[SEAL.]

EARL BILL,
Clerk U. S. Circuit Court, N. D. of Ohio.

(Indorsed:) Cleveland Ins. Co. vs. Globe Ins. Co. Writ of error. Willey, Terrill & Sherman, att'ys for pl'ff in error.

NORTHERN DISTRICT OF OHIO, *ss:*

The due execution of the within writ will appear by the transcripts of proceedings and judgment of said circuit court, hereto annexed and returned herewith.

EARL BILL,
Clerk of said Circuit Court.

OCTOBER 9TH, 1876.

Clerk Bill's fees.

Issuing writ of error & ret. & f'd	$1 25
" citation	1 00
Making transcript, 132 folios	13 20
Certificate & seal	35
	$15 80
Copy of writ of error & filing	50
Bond	1 00
	$17 30

46 Supreme Court of the United States.

The United States of America to the Globe Insurance Company, greeting:

Whereas the Cleveland Insurance Company has obtained the allowance of our writ of error to the judges of the circuit court of the United States within & for the northern district of Ohio, directed to remove into the said Supreme Court to, be holden at the city of Washington, on the first Monday in the month of October next, the record of a certain plaint, process, proceedings, and judgment in certain proceeding by writ of error to the district court of the United States within & for said district, wherein you, the said Globe Insurance Company, in that action lately recovered against the said Cleveland Insurance Company the sum of costs, as by the said record in the said circuit court remaining appears, in which said record and proceedings and also in the rendition of the judgment thereupon manifest error intervened, as by the said Cleveland Insurance Company we are informed, and our writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be; you are therefore hereby commanded and cited to be and appear before the judges of the said Supreme Court at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected and the judgment of our said Supreme Court thereupon.

Witness the honorable M. R. Waite, Chief Justice of the United States

of America, this 19th day of June, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States of America the 100th.

[SEAL.]

M. WELKER,
District Judge of the Northern District of Ohio.

(Indorsed:) Cleveland Ins. Co. vs. Globe Ins. Co. Citation. Willey, Terrell & Sherman, att'ys for pl'ff in error.

Service of this writ is acknowledged by the defendant in error this 24th day of June, A. D. 1876.

GLOBE INSURANCE CO.,
By J. E. INGERSOLL,
Its Att'y.

(Indorsement on cover:) No. 250. The Cleveland Insurance Company, plaintiff in error, vs. The Globe Insurance Company. N. Ohio C. C. U. S. Filed 14th October, 1876.

SHORT & FORMAN, Law Printers, 105 and 107 Superior St., Cleveland, O.

SUPREME COURT OF THE UNITED STATES.

Error to the United States Circuit Court, for the Northern District of Ohio.

The Cleveland Insurance Company,

PLAINTIFF IN ERROR,

VS.

The Globe Insurance Company,

DEFENDANT IN ERROR.

MOTION TO DISMISS PROCEEDINGS IN ERROR.

Brief of Counsel for Plaintiff in Error,

IN OPPOSITION TO THE MOTION.

H. L. TERRELL,
Attorney for Plaintiff in Error.

S. BURKE,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

Error to the United States Circuit Court, for the Northern District of Ohio.

The Cleveland Insurance Company,

PLAINTIFF IN ERROR,

VS.

The Globe Insurance Company,

DEFENDANT IN ERROR.

MOTION TO DISMISS PROCEEDINGS IN ERROR.

Brief of Counsel for Plaintiff in Error,

IN OPPOSITION TO THE MOTION.

FACTS.

The Globe Insurance Company, of Cincinnati, on the 2d day of May, 1872, filed in the District Court of the United States for the Northern District of Ohio, a petition in involuntary bankruptcy against the Cleveland Insurance Company. See Rec. p. 2.

On the 29th day of June, 1872, the Cleveland Insurance Company filed an answer to said petition, *not demanding a jury trial.* See Rec. p. 8.

On the 4th day of October, 1872, the Globe Insurance Company filed a reply to said answer. See Rec. p. 10.

Hearing was had *to the Court*, and on the 16th day of October, 1874, and decree was entered by the District Court dismissing the petition. See Rec. p. 11.

On the same day, to wit: October 16th, 1874, a motion for a new trial was filed by the Globe Insurance Company, and was overruled by the Court. See Rec. pp. 11 and 12.

On the 16th day of December, 1874, the Globe Insurance Company filed a bill of exceptions which had been theretofore allowed by the Court. See Rec. p. 12.

On the same day, to wit: December 16th, 1874, the Globe Insurance Company sued out from the Circuit Court for said District, a *writ of error* to said District Court. See Rec. p. 1.

On the 21st day of December, 1874, the Cleveland Insurance Company filed in said Circuit Court a motion to dismiss said writ of error, which motion was on the same day overruled. See Rec. p. 15.

(To save further reference to this motion it may be stated here that it was overruled on the ground that the writ of error was not returnable, nor would the case be in the Circuit Court, until Janu-January 5th, 1875, the first day of the next term of said Circuit Court, to which term said writ was made returnable on its face. See Rec. p. 1.)

Thereupon, on the 27th day of November, 1875, the Cleveland Insurance Company, said writ of error having been returned and transcript filed, made its motion in said Circuit Court to dismiss said writ, and on the same day said motion was overruled by the Court, to which action of the Court an exception was duly taken and entered. See Rec. pp. 15 and 16.

Thereupon, the case came on for hearing in the Circuit Court on the 15th day of June, 1876, and the decree of the District Court was reversed by the Circuit Court. See Rec. p. 16.

Whereupon, this writ of error from the Supreme to the Circuit Court was sued out by the Cleveland Insurance Company, and this Court is now moved to dismiss this writ.

Inasmuch as the hearing of this motion will involve the determination of one of the questions to be raised by the assignment of errors to be filed herein by the Cleveland Insurance Company, and inasmuch as in our opinion the determination of this motion wil practically terminate this case, so that no other or further hearing will be necessary herein, we have deemed it best here and now to set out in behalf of the Cleveland Insurance Company, plaintiff in error, the following

ASSIGNMENT OF ERRORS.

1. The Circuit Court erred in overruling the motion of the Cleveland Insurance Company to dismiss the writ of error from the Circuit to the District Court, for the reasons set forth in said motion.

2. The Circuit Court erred in holding that the Globe Insurance Company, although it became a creditor of the Cleveland Insurance Company long after the commission of the alleged act of bankruptcy and with full knowledge thereof, could take advantage thereof and maintain a petition in bankruptcy thereon.

3. The Circuit Court erred in holding that the Globe Insurance Company had capacity to acquire, and did acquire, title to its alleged claims against the Cleveland Insurance Company by purchase thereof for the express purpose of commencing bankruptcy proceedings, and thereby became a creditor with the right to maintain a petition in bankruptcy.

4. That the Circuit Court erred in holding that the Globe Insurance Company, having negotiated for a period of four months with the assignee under the State law for a settlement of their differences, with the knowledge that said assignee was all that time proceeding in the execution and administration of his trust as such assignee, was not thereby estopped from setting up the assignment as an act of bankruptcy.

5. That the Circuit Court erred in holding that the assignment by the Cleveland Insurance Company of all its assets for the equal benefit of all its creditors, under the Statutes of Ohio in such case made and provided, was an act of bankruptcy, and in reversing the decree of the District Court herein.

All of which errors appear upon the face of the Record herein, and all of which questions were made in the Circuit Court.

LAW.

It is only with the first error assigned that the Court will have to do in the determination of this motion, and we regard the law upon this question so well settled as not to call for argument beyond the mere statement of the several propositions.

I.

The decree of the District Court upon the petition for adjudication in involuntary bankruptcy, *no jury having been demanded, and trial by the Court having been had*, was reviewable by the Circuit Court under the first clause of the original second section of the Bankrupt Act, by "bill, petition, or other proper process," calling for the *supervisory jurisdiction* of the Circuit Court, *and was not reviewable in the Circuit Court by appeal or writ of error.*

A "petition for review" has, by uniform practice in such cases, been adopted as "proper process."

Morgan v. Thornhill, 11 Wall, 65.
Hall v. Allen, 12 *id.* 452.
Mead v. Thompson, 15 *id.* 638.
Marshall v. Knox, 16 *id.* 555.
Coit v. Robinson, 19 *id.* 285.
Stickney v. Wilt, 23 *id.* 150.
Sandusky v. National Bank, 23 *id.* 289.
Hill v. Thompson, 94 U. S., 322.

Were this proposition less well established we should rest with the mere statement of it, since it is the sole basis of the motion of the defendant in error here to dismiss our writ. It is clear that if this case was *not* within the *supervisory* jurisdiction of the Circuit Court it *is* within the jurisdiction of this Court, provided the decree of the District Court was reviewable at all.

II.

Courts of the United States, being courts of limited jurisdiction, can only exercise their powers *in the cases and in the mode* prescribed

by law, and the rights acquired by a party under a favorable decree of the District Court can only be disturbed by the Circuit Court *in the manner pointed out by the statute.*

Appeal can not be had from a judgment at law, nor will a writ of error lie to a decree in equity. For the same reasons neither an appeal nor a writ of error can be substituted for a "petition for review" to the *supervisory* jurisdiction of the Circuit Court.

Bevins v. Ramsey, et al., 8 Peters, 185.
Kelsey et al. v. Forsyth, 21 Howard, 85.
Stickney v. Wilt, 23 Wall, 150.

These three cases, out of a great number to the same point, sufficiently illustrate the settled line of decision of this Court upon the question covered by our second proposition.

Bevins v. Ramsey holds that an appeal from a judgment at law must be dismissed for want of jurisdiction.

Kelsey v. Forsyth holds that even consent of parties cannot authorize a Federal court to revise a judgment or decree of an inferior court *in any other mode of proceeding than that which the law prescribes.*

Stickney v. Wilt, being a case arising under the Bankrupt Act. holds that there is *no jurisdiction* in the Circuit Court to revise upon "petition in review" the decree of the District Court in a "case in equity," and that an appeal is the only mode in which a Circuit Court can get jurisdiction in such a case.

As far as matter of subtance goes, a "petition for review" is next of kin to an appeal, since under our practice they both take the whole case, facts as well as law, to the Circuit Court, and hence no substantial right would be affected whichever form was used. A writ of error, on the other hand, sustains not the remotest relationship to a "petition for review," since it does not bring before the Circuit Court the whole case, facts as well as law, but only goes to errors of law. Hence the substitution of a writ of error for a "petition in review," as in this case, deprives a party of his substantial right to have the *facts* go to the Circuit Court. If, therefore, a "petition for review" cannot be substituted for an appeal, as held

in *Stickney v. Wilt*, with how much greater force may it be claimed that a writ of error cannot be substituted for a "petition in review."

It is therefore clear that the Circuit Court never obtained any jurisdiction of this case, and that its judgment or decree of reversal and mandate were absolutely null. This brings us to our final proposition, upon which rests the jurisdiction of this Court, and by reason of which this motion to dismiss must be overruled.

III.

Where neither the Circuit nor the Supreme Court have jurisdiction, yet if the Circuit Court assumes jurisdiction and proceeds to judgment or decree, the Supreme Court, *to prevent a failure of justice*, will take jurisdiction, not to determine the merits, but to reverse the unauthorized judgment or decree of the Circuit Court.

In such case, the proper judgment of the Supreme Court is a reversal of the judgment or decree of the Circuit Court, and a mandate to that Court to dismiss the writ or case for want of jurisdiction.

Jackson v. Ashton, 8 Peters, 148.
Mordecai v. Lindsay, 19 How., 199.
Montgomery v Anderson, 21 *id.* 386.
Ballance v. Forsyth, 21 *id.* 389.
Stickney v. Wilt, 23 Wall., 150.

If our second proposition could be held unsound there still remains another ground upon which it is perfectly apparent that the Circuit Court never obtained any jurisdiction of this case, conceding that a writ of error would lie from the Circuit to the District Court in such a case.

The final decree in the District Court was rendered on the 16th day of October, 1874. See Rec. p. 11.

The writ of error from the Circuit to the District Court was not sued out until the 16th day of December, 1874, being sixty-one days after the final decree of the District Court. See Rec. p. 1.

The law then and now in force required appeals from the District to the Circuit Court to be taken, and writs of error from the

Circuit to the District Court to be sued out, within ten days from the entry of the judgment or decree of the District Court.

Bankrupt Act, Orig. Sec. 8.
U. S. Revised Stat., Sec. 4981.

That this provision of the statute applies as well to writs of error as to appeals has been practically determined by this Court.

Insurance Company v. Comstock, 16 Wall. 258.
Coit v. Robinson, 19 *id.* 274.

It is now manifest that upon one or the other of the horns of this dilemma the motion of the defendant in error is impaled. Either a "petition in review" and not a writ of error was the legal mode of revision in the Circuit Court, and *so* that Court obtained no jurisdiction, or, a writ of error being the proper mode, it was not sued out within ten days after the decree of the District Court as required by law, and *so* the Circuit Court never obtained jurisdiction.

In either view of the case this motion to dismiss must be overruled, and what is more important, the judgment or decree of the Circuit Court must be reversed.

That both of these questions were presented to the Circuit Court in our motion to dismiss,—see motion, Rec. pp. 15 and 16.

We intended to have here concluded this brief, but having at this moment received a copy of the brief of our opponents, we are surprised to find on page 6 the following paragraph:

"The form selected was double: both a writ of error and a motion for "leave to file a special petition appearing to have been entered. The action in "the Circuit Court was had upon the writ, and the other proceeding was ignored."

We might well content ourselves by saying that the Record discloses no such "double form"; but we go further and say that in fact no such "double form" was ever employed, and the writ of error was the *sole* and *only* form in which the case was taken to the Circuit Court.

In order that the Record may disclose precisely what did take place in the District Court in reference to a "petition for review" being employed, we append to this brief a certified transcript of the journal entries in the District Court, and in case our opponents desire it to be made part of the Record, we hereby waive the filing of a suggestion of diminution, and consent that it be regarded, taken and printed as part of the Record herein.

Assuming that this appendix will be taken as part of the Record, what does it show?

That on the 26th day of October, 1874, and just within the ten days allowed for review, the District Court extended the time for filing "*proceedings for review*" until the 14th day of November, 1874.

That again on the 14th day of November, 1874, the District Court further extended the time for filing "*proceedings for review*" until the 1st day of December, 1874.

That again on the 1st day of December, 1874, the Globe Insurance Company, upon motion in writing, had its time extended for filing "*proceedings for review*" until December 24th, 1874.

The Record as printed shows that on the 16th day of December, 1874, the writ of error was sued out from the Circuit Court, and no other action was taken under the last leave, which expired December 24th, 1874.

But the appendix further shows that on the 30th day of January, 1875, the Globe Insurance Company moved the District Court for time to file a "petition for review," which motion was overruled by the Court.

Instead, then, of having adopted a "double form" of getting to the Circuit Court, our opponents sinned away their day of grace as far as a "petition for review" was concerned, and when at the last hour they realized their condition their motion for leave to file such a petition was overruled by the Court, and they were left with "all their eggs in one basket."

As matter of history, and as explanatory of the anomalous position of our opponents in reference to this motion, we ask the indul-

gence of the Court for a brief statement in respect to the condition of the law in the Sixth Circuit at the time the decision of the District Court herein was made.

In the early days of the late Bankrupt Act, his Honor, Mr. Justice Swayne, following still earlier decisions of their Honors, Mr. Justice Nelson, in New York, and Mr. Justice Grier, in Pennsylvania, decided in *Perry v. Langley*, 2 B. R. 596, that a general assignment under the laws of Ohio, for the equal benefit of all creditors, was not an act of bankruptcy; and this decision was repeatedly followed and continued to be the settled law of this Circuit, and adopting it as the rule of decision the District Court dismissed the petition in bankruptcy in this case.

Our learned opponents assumed, as they well might, that this rule of decision would be maintained by the Circuit Court which promulgated it, and that they must in some manner so shape their proceedings as to be able to reach the Supreme Court. Accordingly with the sole intent of getting beyond the Circuit Court, so avowed at the time, they adopted a writ of error as the proper form, and when our motion to dismiss was argued in the Circuit Court they insisted, as strenuously as they now insist to the contrary, that this was substantially a suit at law to be carried up on error, and not within the supervisory jurisdiction of the Circuit Court, to be invoked by petition in review. His Honor, the late Judge Emmons, following, in the absence of any other authority, an early decision of the District Court for the District of Wisconsin, overruled our motion to dismiss, remarking that he had grave doubts as to the subject, and advising counsel for the Globe Insurance Company to adopt the "double form" and file also a petition in review. This suggestion was made by the Court on the hearing of our first motion to dismiss, December 21st, 1874, and there still remained three days of their time under the last extension in which to file such a petition; but so determined were counsel at that time not to countenance the idea that the case was within the supervisory jurisdiction of the Circuit Court, where its decision would be final, that they allowed the time to expire and filed no petition for review.

A year later, and while the case was still pending in the Circuit Court, his Honor, Mr. Justice Swayne, consented, or requested in

writing, that his Honor, Judge Emmons, should treat the question as a new one in this Circuit, and should decide this case upon his conception of the law, without reference to the prior decisions in this Circuit, whereupon Judge Emmons, overruling the long-established doctrine of the Circuit, held the assignment to have been an act of bankruptcy and reversed the decree of the District Court.

Having, contrary to all hope or expectation at the time of suing out the writ of error, obtained from the Circuit Court a favorable decision, our learned opponents suddenly "changed front," and are now here with a motion to dismiss our writ of error, upon precisely the same grounds, and couched in almost the identical language, of our motion to dismiss their writ of error in the Circuit Court. We are not aware of any law against such a manoeuvre, and we are glad to welcome the learned counsel, even at this late hour, as converts to our doctrine, but we shall hope for pardon if, under the peculiar circumstances, we have a "mental reservation" as to the disinterested character of their change of heart.

In regard to the process used in getting from the District to the Circuit Court being mere matter of form, and of no consequence, as argued by counsel for defendant in error in their brief, we have little to add beyond what we have said in our second proposition.

In the United States Courts matter of form, as far as process of revision is concerned, is always material, since being Courts of limited jurisdiction, their power is confined to the cases and *modes* prescribed by law. That this is so, is beyond the domain of argument.

And that a writ of error, which goes only to errors of law, is substantially the same as a "petition for review," which carries up facts as well as law, is so clearly untrue, that we rest with the bare statement of it.

In conclusion, we have to suggest to the Court, as we have already suggested to opposing counsel, that, inasmuch as the determination of our first assignment of error, going to the jurisdiction of the Circuit Court in this case, must necessarily be involved in the hearing and decision of this motion, and inasmuch as the de-

cision of this motion must, for that reason, be substantially conclusive of the case, this hearing shall not only include the motion to dismiss but also the first assignment of error, and thus finally dispose of this litigation.

That the estate of the Cleveland Insurance Company has now been tied up nearly seven years by these proceedings furnishes another strong reason why this course should be adopted.

H. L. TERRELL,
Attorney for Plaintiff in Error.

S. BURKE, *of Counsel.*

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H. L. TERRELL,
Attorney for Plaintiff in Error.

S. BURKE, *of Counsel.*

APPENDIX.

In the District Court of the United States,

FOR THE NORTHERN DISTRICT OF OHIO.

IN THE MATTER OF
CLEVELAND INSURANCE COMPANY. } IN BANKRUPTCY.

At Cleveland, in said District, on the 26th day of October, A. D 1874, before the Honorable MARTIN WELKER, Judge of said District. In Bankruptcy, Northern District of Ohio, ss.

And now, upon the 26th day of October, A. D. 1874, the Court, upon good cause shown, do extend the time for filing and preparing proceedings for review in this cause until the 14th day of November, A. D. 1874, upon the application of the petitioners attorneys.

At Cleveland, in said District, on the 14th day of November, A. D. 1874 before the Honorable MARTIN WELKER, Judge of said District. In Bankruptcy, Northern District of Ohio, ss.

Ordered, That the time wherein the petitioning creditors may file their proceedings for the review of the order herein made, on the 26th day of October last, be extended until the 1st day of December, 1874.

The following motion was filed on the 1st day of December, A. D. 1874.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the Northern District of Ohio.

GLOBE INSURANCE CO., *Petitioner*, *vs.* CLEVELAND INSURANCE CO., against whom, &c., *Respondent.*	IN BANKRUPTCY. Motion to Extend Time for Filing Papers.

The Petitioner, above named, shows to the Court that it has drawn up a Bill of Exceptions and submitted to Counsel for Respondent, who have been too busy hitherto to agree on the same, and therefore Petitioner asks the Court to extend the time for filing proceedings in review herein till December 24th, 1874.

J. E. INGERSOLL,
Attorney for Petitioner.

At Cleveland, in said District, on the 1st day of December, A. D. 1874, before the Honorable M. WELKER, Judge of said District. In Bankruptcy.

Ordered, That the time for filing proceedings for the review of the order of this Court heretofore made, be extended until December 24th, 1874.

At Cleveland, in said District, on the 30th day of January, A. D. 1875, before the Honorable M. WELKER, Judge of said District. In Bankruptcy.

This day came the Petitioner, by J. E. Ingersoll, its Attorney, and moved the Court to extend the time for filing a petition for review herein, and thereupon said motion came on to be heard and was argued by Counsel. Whereupon, upon consideration by the Court, it is ordered that said motion be and the same is hereby overruled.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF OHIO, ss.

I, EARL BILL, Clerk of the District Court of the United States for the Northern District of Ohio, do hereby certify that the foregoing proceedings were had in the within entitled cause in the District Court aforesaid, and were omitted from the transcript heretofore made thereof.

Witness my official signature and the seal of said Court, at Cleveland, in said District, this 30th day of December, A. D. 1878.

[L. S.]

EARL BILL, *Clerk.*
By GEO. WYMAN, *Deputy Clerk.*

Cincinnati Law Bulletin Print, 17 West Eighth Street.

Supreme Court of the United States.

Error to the United States Circuit Court, for the Northern District of Ohio.

The Cleveland Insurance Company,

PLAINTIFF IN ERROR,

vs.

The Globe Insurance Company,

DEFENDANT IN ERROR.

MOTION TO DISMISS PROCEEDINGS IN ERROR.

Brief of Counsel for Defendant in Error,

IN SUPPORT OF THE MOTION.

JACOB D. COX,
JOHN F. FOLLETT,
Of Counsel for Globe Insurance Co., Defendant in Error.

Supreme Court of the United States.

Error to the United States Circuit Court, for the Northern District of Ohio.

The Cleveland Insurance Company,

PLAINTIFF IN ERROR,

VS.

The Globe Insurance Company,

DEFENDANT IN ERROR.

MOTION TO DISMISS PROCEEDINGS IN ERROR.

Brief of Counsel for Defendant in Error,

IN SUPPORT OF THE MOTION.

The case below was in Bankruptcy on a petition of the Globe Insurance Company of Cincinnati, against the Cleveland Insurance Company, of Cleveland, to declare the latter an involuntary bankrupt.

In the District Court for the Northern District of Ohio,

where the case originated, the hearing was by the Court without the intervention of a jury.

The record shows that the insolvency of the Cleveland Company was undisputed; that it had ceased to pay its losses, or to do business, and had made an assignment to M. C. Younglove, as trustee for the benefit of creditors, and its affairs were being closed, as pretended, under the insolvency laws of the State of Ohio.

The only real question before the District Court was whether such confessed bankruptcy in fact, gave creditors the right to have the estate of the bankrupt administered under the Federal Bankruptcy Act.

The District Court held that the facts did not constitute bankruptcy under the United States Bankrupt act, and gave judgment accordingly, dismissing the petition.

The plaintiff below took out a writ of error from the Circuit Court of the United States for that District, the cause was removed to said Circuit Court, and upon hearing there, the judgment of the District Court was reversed, and the Cleveland Company was declared a bankrupt.

The latter Company, now, as plaintiff in error, has sued out a writ of error from this Court.

We have moved to dismiss, on the ground that this Court has no jurisdiction to review the judgment of the Circuit Court declaring the bankruptcy of a party in such a case.

The decisions of this Court in a numerous series of cases, from *Morgan v. Thornhill* (11. Wall. 65) onward, have so fully and explicitly settled the question that there is no longer room for discussion. The citation and application of the cases is all that can be needed.

In *Morgan v. Thornhill*, the syllabus of the case is as follows: "No appeal lies to this Court from a decree of the Circuit "Court of the United States, exercising the supervisory jurisdic- "tion conferred upon it by the second section of the bankrupt "act of 2d March, 1867."

This decision has since been often cited and reaffirmed by this Court, but has never been in any respect limited or restricted in its application.

In giving the opinion, it becomes necessary for the Court to define the "supervisory jurisdiction," so that there might be a clear distinction between cases arising under the second section of the bankrupt act (R. S. sec. 4986), and those in which appeal to the Supreme Court is allowed, when "the matter in dispute should exceed $5000," under the ninth section of the act, (R. S. sec. 4989.)

In doing this, Mr. Justice Clifford in announcing the unanimous judgment of the Court, analyzed the several sections of the act bearing upon the question, and declared that the cases in which the subject matter had a fixed pecuniary value, and in which, if the amount were large enough, an appeal might be had to this Court, were only such as are described in the third clause of the original section of the act. (R. S., sec. 4979), *i. e.*

"Suits at law or in equity brought by an assignee in bankruptcy "against any person claiming an adverse interest, or owing any "debt to such bankrupt, or by any such person against an "assignee etc."

He said (*id.* p. 75), "Controversies in order that they may "be cognizable under that clause of the section, either in the "Circuit or District Court, must have respect to some property "or rights of property of the bankrupt transferable to or vested "in such assignee, and the suit, whether it be a suit at law or in "equity, must be in the name of one of the two parties described "in that clause, and against the other. All three of these con-"ditions must concur to give the jurisdiction etc."

The principle so stated was logically applied, and the judgment of bankruptcy, or of no bankruptcy, upon the petition of a creditor, was declared to be a case wholly and only within the supervisory jurisdiction conferred on the Circuit Court by the statute, and one in which no appeal or writ of error lay from the Circuit Court to this Court.

The Court declined, for the moment, to decide whether the

question of jurisdiction would have been changed had the hearing in the District Court been before a jury, but this point was passed upon in a subsequent decision, as we shall see presently.

In *Wiswell et al. v. Campbell et.*, 3 Otto, 348. The Chief Justice, in pronouncing the opinion, says:

"The cases are numerous in which it has been decided that "we cannot revise the action of the Circuit Courts in the exer- "cise of their supervisory jurisdiction under the bankrupt law. "*Morgan v. Thornhill*, 11 Wallace 74; *Hall v. Allen*, 12 *id.* 454; "*Mead v. Thompson*, 15 *id.* 638; *Marshall x. Knox.* 16 *id* 555; "*Cort v. Robinson*, 19 *id.* 274; *Stickney v. Wilt*, 23 *id.* 150; *Sandusky v. Nat. Bank*, *id.* 293. The principle upon which "those decisions rests is, that a proceeding in bankruptcy, from "its commencement to its close upon the final settlement of the "estate, is but one suit. The several motions made and acts "done in the Bankrupt Court in the progress of the cause are "not distinct suits at law or in equity, but parts of one suit in "bankruptcy from which they cannot be separated. *As our "jurisdiction extends only to a re-examination of final judgments "or decrees in suits at law or in equity, it follows* that we have no "control over judgments and orders made by the Courts below "in mere bankruptcy proceedings."

The Court then restates the classes of cases in law and equity in which appeals and writs of error do lie, substantially as had already been stated in *Morgan v. Thornhill*, cited above, and adds, "appeals and writs of error to this Court in such suits are "allowed, *and these are the appeals and writs of error referred to "in sect.* 4,989, *id.* 349."

Again in closing (*id.* p. 351) the Chief Justice, after noticing some points left open in *Cort v. Robinson*, adds:

"Now, however, when the question is fairly presented, and "after it has been fully argued, we are clearly of the opinion "that what was thus said in *Morgan v. Thornhill* was correct, "and that we have no jurisdiction upon error in this class of "cases."

In *Hill v. Thompson*, 4 Otto 322, the case of an adjudication of bankruptcy upon a trial by jury arose, and as doubt had been expressed in *Morgan v. Thornhill* whether that was not one of

the cases in which "special provision" had been made by the statute, and which therefore might be reviewed in the Supreme Court, the Court distinctly passed upon that point, the Chief Justice delivering the opinion. The case is succinctly put in the opening paragraph of the opinion.

"The first question presented in this case is one of jurisdic-
"tion. In *Sandusky v. National Bank*, 23 Wallace 289, we de-
"cided that an adjudication of bankruptcy, without a trial by
"jury, could not be brought here for examination by appeal, as
"*the Circuit Court could only review such a proceeding under its*
"*supervisory jurisdiction where its action was final.* It only re-
"mains to consider, therefore, whether a different rule must be
"applied when the adjudication is after a trial by jury."

The question is distinctly answered by saying (p. 323) that there can be no difference in the rule, because in either case the action is before the Court "when sitting as a Court of Bankruptcy," and the order of judgment declaring bankruptcy is the same in either case and under the supervisory control of the Circuit Court.

1. From the unwavering tenor of all these decisions, it is clear that an adjudication on the petition in involuntary bankruptcy is *not* one of the cases in law or equity, having a subject matter of $5,000 pecuniary value, in which appeal from a final judgment lies to the Supreme Court.

2. It is equally clear that such an adjudication of the Circuit Court *is* only one of the steps in the summary bankruptcy proceedings, and is *not* a final judgment or decree at all.

3. It also follows, to use the language of this Court in *Sandusky vs. National Bank*, quoted above, that not only had the Circuit Court *exclusive* jurisdiction to review the action of the district upon the petition in involuntary bankruptcy in the case at bar, but that such Circuit Court "could *only* review such a "proceeding under its supervisory jurisdiction *where its action* "*was final.*"

4. What we have last urged makes it a matter of no consequence what was the *form* in which the decision of the District

Court was reviewed in the Circuit Court—whether upon writ of error or special petition. The statute (Sec. 4986) gives the Circuit Court this supervisory jurisdiction "upon bill, petition, or other proper process."

The form selected was double; both a writ of error and a motion for leave to file a special petition appearing to have been entered. The action in the Circuit Court was had upon the writ, and the other proceeding was ignored.

It must be borne in mind that the later decisions of this Court had not then been rendered, and the parties from abundant caution might well start with a double form of procedure, so that they might not lose their remedy if the matter of form should turn out to be essential.

The writ of error was the natural mode of reviewing a judgment which turned on a legal question, and was the one recognized and acted on by the Circuit Court.

As, therefore, the Court was acting on a matter in which, as has been shown, its jurisdiction was *supervisory alone*, the *process* by which the case was brought before it is of no consequence. We think it clear, however, that it was, in the language of the statute, a "proper process."

It would be absurd to argue that the form of process could change an unquestionable, sole jurisdiction into no jurisdiction at all.

5. Even if the Circuit Court had erred as to the form in which its supervisory jurisdiction should be exercised, such error could not be reviewed in this Court for the reasons stated above. This would not be a case like that of *Stickney v. Wilt*, 23 Wallace 150, where the Circuit Court was held to be exercising its jurisdiction under Sec. 4989 of the Revised Statutes, and its action in assuming the supervisory jurisdiction given by Sec. 4986 was held to be erroneous. In such a case there was a rightful jurisdiction of such a sort that the "final judgment" of the Circuit Court could properly be examined here. But in the case at bar there could be no jurisdiction of the Circuit Court under Sec.

4989 as is so completely settled by the cases cited. The jurisdiction was either under Sec. 4986 or not at all; and under this section its action cannot be reviewed by this Court. As, therefore, there is no other ground of jurisdiction which could make it lawful for this Court to act as a reviewing Court in this case, it cannot inqnire at all, whether the Circuit Court proceeded correctly or erroneously in the exercise of its *exclusive* and *final* jurisdiction in the adjudication of bankruptcy.

We claim, however, as we have already emphatically stated, that the Circuit Court was so clearly within its jurisdiction that this last question cannot arise, and we should not notice it but for an intimation that it may be raised by our opponents.

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JOHN F. FOLLETT,
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